

USAID UKRAINE COMMERCIAL LAW CENTER PROJECT

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Deloitte Touche Tohmatsu Emerging Markets, Ltd.

QUARTERLY PERFORMANCE MONITORING REPORT 4

For the Quarter Ending 31 July 2001

SPECIFIC ACTIVITIES DURING REPORTING PERIOD

ADMINISTRATIVE & INSTITUTIONAL

Staff development –

- After a round of interviews with USAID/OER participation, Zaporizhya Arbitration Court Judge Valentyna Danishevskaya joined the project on 15 May as Center Director. In addition to 9 years on the bench, V. Danishevskaya worked as director of the Legal department of the Zaporizhya Oblast Executive Committee.
- A special financial management and planning workshop was organized by Deloitte Touche Tohmatsu Emerging Markets Group in Washington, DC, for the Center's bookkeeper and Financial Department Director. It took place 25-29 June 2001. As a result, work has begun in earnest on the finalization of a comprehensive business plan for the Commercial Law Center.
- Strategic Development Director Yuriy Yurchenko was promoted to the position of Deputy Director on 13 July.
- The recruitment process continued for the vacant Legislative Development Department Director position. Advertisements were placed in major newspapers and several interviews were held. The decision was reached to continue the search.
- Professional Development Director Myroslava Antonovych announced in mid-July that she would not seek a renewal of her contract with the Center given that she has decided to resume her full-time professorial work at Kyiv-Mohyla Academy. Subsequently, advertisements were placed in local newspapers to announce the vacancy.
- Work is proceeding with the staff attorney at Kyiv-Mohyla Academy to complete the necessary documentation to lease new office space for the Center beginning in December. Since the Academy's space is legally state property, it will be necessary to clear all of the documents through the Ukrainian State Property Fund before the lease may be concluded.

QUARTERLY REPORT

31 July 2001

- Responding to a significant increase in the procurement of local consultant services, the Project has developed a newer, more comprehensive version of the consultancy contract. Most of the changes were introduced to bring the contract into better conformity with Ukrainian legislation and practice.
- In addition, an internal training session was conducted for the legislative development and professional development staff on how to better estimate consultant honoraria and to introduce the staff to new changes in internal procedures for contract preparation and payments.
- In May the Project began preparing a comparative budget analysis of actual monthly expenses versus the Center's target budget. This spreadsheet is made available to the senior Center staff to provide guidance in making financial and program decisions.
- In addition, the Project regularly surveys the NGO 'market' to identify potential new donors. A list has been prepared and it is updated on a regular basis. Once the Center has been registered as a Ukrainian NGO and an appropriate business plan has been finalized, we will be able to begin soliciting funds for additional activities.
- In June and July, work continued on the development of a comprehensive business plan for the Commercial Law Center. Given that the Center's prospective funding will focus on activities in specific areas such as training, lobbying, etc., the department directors have been tasked with the preparation of separate sections of the plan. Later, these sections will be drawn together into a master document. This work is proceeding in close cooperation with the Deloitte Touche Tohmatsu office in Washington, DC.

PROFESSIONAL DEVELOPMENT

Training Workshops

Training Workshop IV, "Protection of Economic Competition", was held 14-18 May. Participants were provided with the International Law Institute-published manual "Anti-Trust Legislation and Economics" by E. Gellhorn and W. Kovacic. At the workshop the ILI was represented by Deputy General Counselor of UUNET Technologies Inc., Alexander Kogan, who gave lectures and presented case studies in anti-monopoly law. Presentations were also made by 5 Ukrainian experts and the Center's Senior Legal Advisor Justin T. Holl, Jr. 41 lawyers from state institutions and practicing lawyers attended.

From 11-15 June 2001 the Commercial Law Center presented Workshop V on "Methods for Dispute Resolution". Stanimir Alexandrov from the International Law Institute and legal adviser of the law firm Powell, Goldstein, Frazer & Murphy LLP in

QUARTERLY REPORT

31 July 2001

Washington presented a series of lectures on the methods for commercial and economic disputes resolution in Europe and the USA. Seven Ukrainian experts also took part in the workshop, including judges from the Higher Arbitration Court and the Supreme Court, specialists from the program “Search for Common Ground”, International Commercial Arbitration Court at the Chamber of Industry and Commerce of Ukraine, professors from institutions of higher learning and the Commercial Law Center Director. Comprehensive written materials were prepared and distributed to the 45 public and private lawyers who attended.

The Center conducted its 6th and final training workshop this year, “Comparative Business Law in Foreign Countries”, 9-13 July 2001 in Kyiv. The International Law Institute lecturer at this workshop was Peter Yanachkov of the law firm Morris Deutsch. Mr. Yanachkov presented various aspects of business law in Europe and America. Seven local experts also made presentations, including Judge Usenko of the HAC. Thirty public and private lawyers participated in the week-long seminar.

The Professional Development Department has begun preparing for Project Year Two by circulating a special survey questionnaire to all seminar participants. Particular emphasis will be placed on determining how the participants have used the information they received during the seminars in their workplace.

Continuing Legal Education (CLE) Seminars

On 18 May the Center held a one-day CLE course for lawyers in Odesa, coordinating with the Odesa National Legal Academy. It was entitled “Commercial Aspects of the Use of Objects of Intellectual Property in a Market Economy”. V.I. Zhukov from Kharkiv (Candidate of Legal Sciences, lawyer, Director of the Intellectual Property Institute), I.V. Pavlovska (Head of the Department of Formal Expertise of State Enterprises at the Ukrainian Institute of Industrial Property), and L.P. Tymofiyenko (Executive Director of the Authors Legal Association), all made presentations. There were forty attendees, selected from state and local government officials and practicing lawyers.

On 25 May the seventh one-day seminar “Issues of Legal Support of Small Businesses” within the CLE short-courses was held in the city of Kharkiv at the Yaroslav the Wise National Law Academy. The speakers at the seminar were I.V. Spasibo-Fateyeva (adjunct professor of Civil Law at the Academy) and HAC Judge Ye.A.Usenko. 26 public and private attorneys participated in the seminar. As regularly practiced, a questionnaire was distributed to all workshop participants in an effort to track and respond to suggestions and comments.

On 29-30 May the Center conducted a seminar entitled “Legislative Drafting Techniques: Theory and Application Practices” at the Kyiv Regional Center of the Academy of Law Sciences of Ukraine. A. P. Zayets (First Deputy Head of the Main Scientific and Expert Department of the Verkhovna Rada Secretariat) and A. F. Tkachuk (former MP, legislative drafting expert, and Chairman of the Civic Society Institute) presented lectures and conducted practical exercises. 29 lawyers attended, with the same approximate mix of public and private lawyers as at other short-course seminars.

QUARTERLY REPORT

31 July 2001

On 2-3 July 2001 the Center conducted its second seminar on “Legislative Drafting Techniques: Theory and Application Practices” at the Kyiv Regional Center of the Academy of Law Sciences of Ukraine. As at the first seminar, A. P. Zayets (First Deputy Head of the Main Scientific and Expert Department of the Verkhovna Rada Secretariat) and A. F. Tkachuk (former MP, legislative drafting expert, and Chairman of the Civic Society Institute) presented lectures and conducted practical exercises. They were joined by French-American attorney Peter Morgos who presented a lecture on European legislative drafting practice. 31 lawyers attended this second seminar. Peter Morgos was also asked to prepare a brief memo critiquing the seminar. His suggestions will be incorporated into the seminar curriculum for next year.

Commercial Law Curriculum Reform

In this reporting period the Center conducted the fourth meeting of the Commercial Law Curriculum Working Group, on 8 June. At this stage the group consists of D.V. Zadykhaylo (Kharkiv), V.M. Sushchenko (Kyiv), and V.M. Kossak (Lviv). The experts finalized the text of the Commercial Law Curriculum and reviewed a list of special elective courses, namely, “Legal Regulation of Securities” prepared by V.M. Kossak, “Legal Regulation of Trade”, prepared by D.V. Zadykhaylo, and “Resolution of Business Disputes” by V.M. Sushchenko.

Currently, legal education in Ukraine focuses primarily on general legal knowledge. In order to establish a Commercial Law specialty it will probably be most expedient to establish a post-graduate specialty or a two-year certified course.

Following the last meeting of the Commercial Law Curriculum Working Group on 8 June, the finalized curriculum was circulated for final approval by all members of the group (Sushchenko, Kysil, Dovhert, Kossak, Zadykhaylo). The Center is currently preparing a special packet of information which will eventually be submitted to the Education and Science Ministry for certification. Before submission, however, the text must be reviewed by at least 2 experts. The model curriculum will also be submitted to a practicing attorney for comment.

Practical experience for students

In accordance with the agreement signed between the Commercial Law Center and the Kyiv-Mohyla Academy Law School, a student law clinic has been functioning at KMA since 1 May 2001. A special set of regulations has been prepared by the clinic director and approved by the law school dean.

The clinic’s latest activity report details four consultations since 1 June in the area of commercial law. The Commercial Law Center Director and professional development director met with the clinic’s staff and student interns on 18 June to discuss the operation of the clinic and its professional consultations. In addition, we were able to be present during one of the consultations to get a first-hand look at how the work is conducted.

QUARTERLY REPORT

31 July 2001

We also discussed ways that the clinic could popularize the work of the clinic, particularly among local businesses, to attract more clients in the commercial law area. The Center will consider the possibility of assisting KMA in establishing access to a Ukrainian legal database for interns to use at the clinic.

Publications for professionals

The first issue of the Center's law journal "Ukrainian Commercial Law" has been published. This inaugural issue is dedicated to the protection of intellectual property rights which effectively demonstrates a cross-link to other Center activities in this area. While the journal does not in toto represent a marked departure from traditional Ukrainian legal journals, it is the explicit editorial policy of the Center to include materials for practicing attorneys. For instance, this issue includes an article on "A Lawyer's Responsibilities With Respect to Intellectual Property: From Creating a Portfolio of Intellectual Property to Advising on Strategy", written by IRIS expert, attorney Patricia Ray.

Work has also begun on the second journal issue, which will be dedicated to the problem of mortgage lending.

LEGISLATIVE DEVELOPMENT

In this reporting period the Center's legislative development department began implementing the six-month strategy submitted to USAID regarding assistance in improving the draft Law on Hypothecation. A meeting was arranged on 8 June 2001 with V. Suslov, Deputy Chairman of the Committee for Banking and Finance of the Verkhovna Rada (the committee responsible for the draft), to brief him on the activities of the Commercial Law Center and to discuss areas of cooperation between his Committee and the Commercial Law Center. The Committee has received proposals from various MPs for modification of the draft and Mr. Suslov agreed that the Committee would appreciate assistance from the Center in evaluating the proposals and making other necessary recommendations. Mr. Suslov's assistant, Mr. Yasinski, provided the Center with the MPs' proposals, but these have not been organized in a manner that is appropriate for legislative work. Therefore, the Center is in the process of organizing this material in a table cross-indexed to the draft law. This complex and time-consuming task will be completed in early July, at which time a working group organized by the Center and working with the Committee will commence an expert analysis of the proposals and provide comments and recommendations. In addition, several meetings were held with specialists in hypothecation law, including the Deputy Chairman of the State Committee for Land Resources, to assess their opinions, qualifications and availability for work in the working group. In particular, S. Kruchok, Head of the Banking Chair at the National Agrarian Academy, has shown an in-depth knowledge of the subject and, at the request of the Center, prepared a paper entitled "On the Development of

QUARTERLY REPORT

31 July 2001

Hypothecation in Ukraine”, which will serve as a guide for the working group in identifying relevant issues and analyzing potential solutions and alternatives for improving the draft law.

On 31 May the Center held a roundtable on intellectual property rights, and specifically on Book IV of the draft Civil Code, attended by drafters, prominent specialists and high ranking members of key state and parliamentary committees. There was unanimous agreement that Book IV should contain requisite general principles and definitions, but that the more detailed aspects of intellectual property rights should be dealt with by specific laws. The Center has established a Working Group to rework Book IV to eliminate controversies and expedite the passage of the Civil Code as a whole. The first meeting of the Working Group is scheduled for 18 June 2001.

This work complements that work that has been carried out by the Commercial Law Development Project (CLDP) of the US Department of Commerce and the State Department of Intellectual Property of Ukraine (SDIP), which has been working on IPR legislation, except for Book IV of the Civil Code.

The final version of the of the entire draft of Book IV of the Civil Code will be completed by 1 September 2001 and will be ready for general comments from interested stakeholders in the Ukrainian intellectual property legislation.

The Center’s legislative development department has been working with the Economics Ministry to organize a high-level roundtable discussion concerning the current Concession Law. There is concern in the Ministry that the law, as practical matter, is not being used and has not generated any appreciable amount of investment.

The roundtable discussion was held on 25 July, entitled "Problems and Perspectives Toward the Development of Concession Activities". There was a consensus at the roundtable that the Center, in close cooperation with the Ministry of Economy, should conduct a series of seminars regarding both theoretical and practical issues involved in the implementation of concession activity. These seminars will be directed at local government officials and the private sector and will take place in several regions around Ukraine. The seminars will address methods through which the local governments can benefit by granting concessions and private enterprises can avail themselves of the advantages of concessions granted by local governments. The seminars will also have an effective “how-to” component to teach the interested parties the actual procedures and documentation required to take advantage of the legislation. It was also concluded at the roundtable that concession legislation in Ukraine needs further development. The Center will assist in developing concrete proposals to improve the concession legislation.

From 18-20 July the Center staff attorney specializing in financing and hypothecation traveled to Donetsk to investigate a proposed pilot mortgaging program to be implemented in that region. He met with the Director of the Donetsk City Center for State Land Cadastre, Ivan Frolov; the Head of the Legal Department of the Donetsk

QUARTERLY REPORT

31 July 2001

City Rada, V. Ustimenko, and a member of the Academy of Law Sciences specializing in hypothecation, H. Znamensky. The mayor of the City of Donetsk, V. Rubak, having considered proposals from financial institutions, his own experience in the area of residential construction, and the city land privatization program has directed that mortgage financing mechanisms be developed for the city. V. Ustimenko has been appointed coordinator of this program. The initial effort seeks to find ways of implementing mortgage financing given the lack of an updated Land Code, rudimentary mortgage legislation, and the absence of system of land registration capable of supporting vigorous mortgage activity. The Center attorney briefed the parties on the Center's program to improve the draft legislation on hypothecation in Ukraine. The Center and Donetsk specialists agreed to cooperate by sharing information regarding the development of the current draft Law on Hypothecation, creation of forms for mortgage lending, and other practical issues involved in developing a mortgage system. Cooperation may extend to holding joint public outreach events.

OUTREACH & INFORMATION

Business seminars

During this reporting period, the Center's first cycle of business seminars was completed. Seminars were held in Mykolayiv, Odesa, Kharkiv, Poltava, and Simferopol. Almost 140 entrepreneurs had an opportunity to enhance their knowledge of commercial law as a means to protect their commercial interests and to learn how to apply the norms of commercial law in their everyday work. Based on the comments received on the questionnaires distributed at the seminars, it was evident that the participants greatly appreciated these seminars held in their regions. The Deputy Economics Minister of the Crimea and the Head of the Union of Industrialists and Employers of the Crimea forwarded thank-you letters to the Center in addition to proposals for cooperation on a continuing basis. These seminars also provide a truly effective means to promote the Center's image and reputation among business circles in the regions.

The last seminar of 18 took place in Uzhhorod. Over the past year, business seminars were held in 16 oblasts, in the city of Kyiv, and in the Crimea, covering 64% of the country. A total of 450 businesspersons participated in these seminars; 40% were women. Participants were regularly polled and the Center's seminars were regularly highly rated, demonstrating that the Ukrainian business community is receptive to legal-oriented information and is interested in working with Center and paying for its services. Letters with requests to continue these seminars were received from many business associations and the outreach department is currently analyzing them as well as the final participant questionnaires and reports by the Center's lawyers who attended the seminars in developing next year's business seminar program.

QUARTERLY REPORT

31 July 2001

Publications for non-professionals

The first issues of the Commercial Law Center's Newsletter generated a great deal of public. We received many letters with suggestions, comments, and requests for additional copies. Government officials such as Deputy Verkhovna Rada Chairman Stepan Havrysh, the Chairman of the Supreme Court of Ukraine, as well directors of public libraries, private firms and business associations, and many others, wrote the Center to welcome the appearance of such a publication.

The preparation of the Center's first two business law compliance guides ("Legal ABCs for Entrepreneurs") has been completed. They are: "How to Register An Entrepreneurial Activity" and "Licensing of Economic Activity in Ukraine". These guides are currently in the hands of the designers and printers. They will be distributed directly by the Center, along with the Ukraine Market Reform Education Program and representative offices of the State Committee for Entrepreneurship in the regions of Ukraine.

Media Seminars

On 26 June, in cooperation with "Internews-Ukraine" the Center organized a special training session for over 20 Ukrainian journalists from around the country. This seminar took place within the framework of Internews-Ukraine's annual 6-week "News School". The Center was represented by its director, Valentyna Danishevskaya, and Senior Legal Adviser Justin Holl. Their presentation was entitled "Objective Reporting Ensures Transparency of Law-based Market Relations". One of the participating journalists went on to prepare a short television segment about the Center's training seminars for lawyers. This program was shown on the "Zahrava" television channel.

Press Relations

The Center's activities continue to regularly attract the attention of the Ukrainian press. In this reporting period, articles appeared in "Yuridicheskaya Praktika" (re the "Comparative Business Law" training workshop, as well as the Center's roundtable on concession issues). A large article on the concession discussion was published in "Yurydychny Visnyk". The First National Radio Station aired two programs on the Center's activities regarding concession and mortgage in Ukraine.

QUARTERLY REPORT

31 July 2001

FINANCIAL STATEMENT & MONITORING PLAN UPDATE

Please see attached.

Petro Matiaszek
Chief of Party